

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015120931

ORDER OF DETERMINATION OF  
SUFFICIENCY OF DUE PROCESS  
COMPLAINT

On December 15, 2015, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) with the Office of Administrative Hearings naming Berkeley Unified School District. On January 26, 2016, an order was issued permitting Student to file an amended complaint and it was deemed filed that day. Berkeley, having been served the amended complaint prior to it being filed with OAH, filed a Notice of Insufficiency on January 25, 2016, as to the issues raised in the amended complaint. On January 28, 2016, OAH granted District's NOI in part as to Student's Issues 2, 3, 5, and 6, but denied as to Issues 1 and 4, and gave Student 14 days to file an amended complaint.

Student filed a second amended complaint on February 11, 2016. On February 26, 2016, Berkeley filed a Notice of Insufficiency as to Student's second amended complaint.<sup>2</sup>

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A).

<sup>2</sup> Berkeley contends in the NOI that the parties executed a final settlement agreement on September 15, 2015, that bars all claims up to that date and that many of Student's issues arise prior to that date. Whether or not the settlement agreement bars issues raised in the amended complaint is not the subject of an NOI. This Order does not bar Berkeley from making other motions regarding the settlement agreement's applicability.

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.” (Sen. Rep. No. 108-185, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. of Educ. v. Benton* (S.D. Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

## DISCUSSION

Student’s second amended complaint contains six issues for hearing, which involve Berkeley’s purported failure to provide Student proper supplemental supports, failure to timely and adequately assess Student, changes in Student’s educational program and Student’s lack of meaningful educational progress. Student has corrected the deficiencies noted in the January 28, 2016 Order and now alleges sufficient facts in all Issues regarding Berkeley’s purported failure to provide Student with a FAPE. Therefore, Student alleged sufficient facts to put Berkeley on notice as to Issues 1 through 6 for hearing.

Among Student’s proposed resolutions is that Berkeley provide services, staff training, reimbursement to Parent and independent assessments. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(IV).) The proposed resolutions stated in Student’s

complaint are well-defined requests that meet the statutorily required standard of stating a resolution to the extent known and available to Student at the time.

### ORDER

1. The complaint is sufficient under title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: March 3, 2016

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*Peter Paul Castillo*  
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PETER PAUL CASTILLO  
Presiding Administrative Law Judge  
Office of Administrative Hearings